UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

ALBERTA JENKINS,	:	Hon. Joseph H. Rodriguez
Plaintiff,	:	Civil Action No. 10-5058
v.	:	
KNOWLEDGE LEARNING CORP. and KINDERCARE LEARNING CENTERS, INC. d/b/a DELRAN KINDERCARE,	:	MEMORANDUM OPINION & ORDER
Defendant.	:	

This matter is before the Court on Plaintiff's motion for attorney's fees [103] and supplemental motion for attorney's fees [118]. After a five-day jury trial, Plaintiff was awarded $46,000 in compensatory damages for her claim of wrongful termination under the Age Discrimination in Employment Act.

The enforcement section of the ADEA, 29 U.S.C. §626(b), incorporates the remedies authorized by the relevant portions of the Fair Labor Standards Act, including the provision that the "court . . . shall, in addition to any judgment awarded to the plaintiff or plaintiffs, allow a reasonable attorney's fee to be paid by the defendant." 29 U.S.C. §216(b). An award of attorney's fees to the prevailing plaintiff is thus mandatory. Rodriguez v. Taylor, 569 F.2d 1231, 1244 (3d Cir. 1977) (citing Rogers v. Exxon Research & Engineering Co., 550 F.2d 834, 842 (3d Cir. 1977)). The Court has discretion, however, in deciding what amount is reasonable, see Sullivan v. Crown Paper Bd. Co., Inc., 719 F.2d 667, 669 n.1 (3d Cir. 1983), and "[t]he party seeking attorney's fees has the burden to prove that its request for attorney's fees is reasonable." Rode v. Dellarciprete, 892 F.2d 1177, 1183 (3d Cir. 1990).

"The most useful starting point for determining the amount of a reasonable fee is the number of hours reasonably expended on the litigation multiplied by a reasonable hourly rate." Hensley v. Eckerhart, 461 U.S. 424, 433 (1983). The product, or lodestar, is presumed to be the reasonable fee. Blum v. Stenson, 465 U.S. 886, 897 (1984). The district court has the discretion to make certain adjustments to the lodestar; however, the party seeking adjustment has the burden of proving that an adjustment is necessary. Cunningham v. City of McKeesport, 753 F.2d 262, 268 (3d Cir. 1985), vacated on other grounds, 478 U.S. 1015, reinstated, 807 F.2d 49 (3d Cir. 1986). See also Bell v. United Princeton Properties, Inc., 884 F.2d 713, 715 (3d Cir. 1989) (In a statutory fee case, the party opposing the fee award then has the burden to challenge, by affidavit or brief with sufficient specificity to give fee applicants notice, the reasonableness of the requested fee). The district court cannot "decrease a fee award based on factors not raised at all by the adverse party." Bell, 884 F.2d at 720.

In this case, Plaintiff's counsel has submitted sufficient documentation in support of her motions for the Court to conclude that the lodestar amount claimed, $142,920.50 -- $134,533 initially and $8,387.50 for post-trial motion practice[1] -- is reasonable.

The defense opposes the motions for fees, arguing that although Plaintiff initially pursued three theories under the ADEA and three theories under the Americans with Disabilities Act ("ADA"), she was the prevailing party on only the claim brought to trial, wrongful termination in violation of the ADEA.[2] Further, the jury awarded Plaintiff

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[1] Under the ADEA, a party entitled to an award of attorney's fees is also entitled to fees for the time spent litigating his or her right to those fees. Maldonado v. Houstoun, 256 F.3d 181, 188 (3d Cir. 2001).

[2] At the summary judgment stage, Plaintiff voluntarily withdrew her claims of disability discrimination and failure to accommodate under the ADA. Summary judgment was granted on the ADEA claim of hostile work environment and on the claim for retaliation under the ADA. Prior to trial, Plaintiff waived her ADEA retaliation claim and elected to proceed only on the claim of age discrimination violative of the ADEA.

$46,000 for past lost wages, but did not award future lost wages or liquidated damages. As such, the defense argues that Plaintiff obtained only limited success in this matter.

The court can reduce the hours claimed by the number of hours "spent litigating claims on which the party did not succeed and that were 'distinct in all respects from' claims on which the party did succeed." Institutionalized Juveniles v. Secretary of Public Welfare, 758 F.2d 897, 919 (3d Cir. 1985) (quoting Hensley, 461 U.S. at 440). In this case, however, the claims were not distinctly different, but "involve[d] a common core of facts" and were "based on related legal theories." See Robb v. Ridgewood Bd. Of Educ., 635 A.2d586, 591 (N.J. Super. Ct. Ch. Div. 1993). The evidence sought by Plaintiff to show pretext was the same for all claims, whether brought under the ADA or ADEA. The Court is unable to parse out any time submitted by Plaintiff's attorneys which is not reasonably attributed to the claim on which Plaintiff succeeded. Indeed, Plaintiff's counsel did not bill for time spent reviewing medical records in pursuit of the ADA theories. See Ex. O to Doc. 103.

Further, the Court rejects Defendant's "mathematical approach comparing the total number of issues in the case with those actually prevailed upon." Hensley, 461 U.S. at 435 n.11. "Such a ratio provides little aid in determining what is a reasonable fee in light of all the relevant factors. Nor is it necessarily significant that a prevailing plaintiff did not receive all the relief requested. For example, a plaintiff who failed to recover damages but obtained injunctive relief, or vice versa, may recover a fee award based on all hours reasonably expended if the relief obtained justified that expenditure of attorney time." Id.

Defendant also has argued that attorney's fees for administrative proceedings should not be awarded. However, a party alleging a violation of the ADEA must first pursue an administrative remedy prior to bringing suit. Oscar Mayer & Co. v. Evans, 441 U.S. 750 (1979). Thus, it has been held, since a plaintiff must at least give administrative remedies a chance before commencing an ADEA action in federal court, a fee award under the ADEA may properly include fees for time spent on administrative proceedings that were a prerequisite to the suit. Tevelson v. Life and Health Ins. Co. of America, Civ. A. No. 83-11, 1986 WL 12783, *2 (E.D. Pa. Nov. 16, 1986) ("Where the statue authorizing fees expressly requires the exhaustion of administrative remedies, . . . the recovery of attorney's fees is proper for time spent pursuing the required administrative remedy.") Because the EEOC proceeding was a prerequisite for Plaintiff's claims, the time spent by her attorneys at that administrative level was "reasonably expended" on the litigation. See Hensley, 461 U.S. at 433.

In conclusion,

IT IS ORDERED this 3rd day of February, 2015 that Plaintiff's motion for attorney's fees [103] and supplemental motion for attorney's fees [118] are hereby GRANTED. Judgment to be entered.

/s/ Joseph H. Rodriguez
Joseph H. Rodriguez, USDJ